

# DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## POLICIES AND PROCEDURES

*Subject:*  
**USES AND DISCLOSURES OF PROTECTED  
HEALTH INFORMATION OF DECEASED  
INDIVIDUALS UNDER HIPAA**

Effective Date:  
6/21/04

Policy Number:  
HIPAA 04-5

Review Date:  
5/26/06  
Revision Date:  
6/22/06

Entity responsible:  
Office of Legal  
Counsel

### 1. **Purpose:**

This policy provides instruction and guidance on the uses and disclosures of protected health information (PHI) of deceased individuals under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and under the Tennessee Code Annotated.

### 2. **Policy:**

- 2.1 The Department of Mental Health and Developmental Disabilities (DMHDD) must apply the same privacy practices to protect the PHI of deceased individuals from unauthorized uses and disclosures as it does to protect the PHI of living individuals. Except as permitted by state law, a valid written authorization to release the PHI of deceased individuals must be obtained from the parent(s) or guardian(s) of a minor, authorized to act on his or her behalf, or the personal representative, executor or administrator, authorized to act on behalf of the deceased individual.
- 2.2 If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under this policy, with respect to PHI relevant to such personal representation.
- 2.3 Under subpoena, the RMHI may disclose to the state medical examiner medical and hospital records pertaining to a case under investigation, pursuant to Tenn. Code Ann. §§ 38-7-106 and 38-7-117. The state medical examiner, the deputies and assistants of the state medical examiner, and each county medical examiner through the appropriate district attorney general, may subpoena a needed medical and/or hospital record pertaining to a decedent's case under investigation due to the violent, suspicious or unnatural circumstances of his or her death, including suspected suicide.

### **3. Procedure/Responsibility:**

- 3.1 Any Central Office employee or Regional Mental Health Institute (RMHI) employee who receives a request for the use or disclosure of PHI about a deceased service recipient from the state medical examiner, undertaker/funeral director, other agencies or individuals, must notify as soon as practicable, the Central Office Privacy Officer or RMHI Privacy Officer or his/her designee, of the request for use or disclosure.
- 3.2 The Central Office Privacy Officer or RMHI Privacy Officer or his/her designee must review the request, and if appropriate, disclose the PHI.
- 3.3 Where a request for the use or disclosure of PHI is received from the state medical examiner by the RMHI Privacy Officer or his/her designee, the RMHI Privacy Officer must advise the RMHI attorney of the request.
- 3.4 The RMHI may disclose PHI to an undertaker/funeral director as necessary for the undertaker/funeral director to carry out his/her duties with respect to the deceased individual. The RMHI employee receiving the request must notify the RMHI Privacy Officer or his/her designee as soon as practicable, of the request for use or disclosure.
- 3.5 Where a deceased service recipient is known or suspected to have had a communicable, contagious or infectious disease, the health authorities in the town or county where the service recipient died, and the county health authorities where decedent last resided before hospital admission, must be immediately notified of the disease, including AIDS, by the RMHI physician on duty. This notification law also applies when delivering the body to an agency or person responsible for the disposition of the body, such as the medical examiner, so that necessary precautions can be taken in the handling of the body. If the body is to be delivered for disposition, the RMHI Privacy Officer or his/her designee, or RMHI attorney, must be notified as soon as practicable.
- 3.6 When a service recipient dies in an RMHI, the Chief Officer or his/her designee must try to contact the next of kin or some relative of the person, advising of the cause or circumstances surrounding the death, if known, before calling an undertaker/funeral director to get the body. If a relative or next of kin is not available or known, or refuses to call an undertaker/funeral director or make arrangements to dispose of the body within eight (8) hours after death, the hospital or institution may call an undertaker/funeral director to remove the body. The RMHI Privacy Officer or his/her designee, or RMHI attorney, must be notified as soon as practicable. To release the body of the deceased to an undertaker/funeral director without first attempting to contact the next of kin or

relatives is a Class C Misdemeanor. *See* T.C.A. Section Tenn. Code Ann. § 68-4-101(a), (d).

- 3.7. If a deceased service recipient was admitted to the RMHI involuntarily, in addition to notifying the next of kin, the Chief Officer or his/her designee must mail written notice to the court that ordered the commitment, advising of the cause or circumstances surrounding the death, if known. In either event, the notification to the court must take place within ten (10) days of the death.

**4. Other Considerations:**

**Authority:**

Health Information Portability and Accountability Act of 1996, Public Law 104-191; HIPAA Regulations 45 C.F.R., Part § 164.502(g)(4) (1); Tenn. Code Ann. §§ 33-1-303, 33-3-103, 33-3-104(7), 33-4-109; Tenn. Code Ann. §§ 38-7-106, 38-7-108, 38-7-117; and Tenn. Code Ann. §§ 68-4-101, 68-4-103, 68-5-102.

Approved:

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Commissioner

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Date